

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KHOA HOANG,  
Plaintiff,  
v.  
TRIDENT SEAFOOD  
Defendant

Case No. C06-1158RSL

**ORDER DENYING MOTION  
FOR A PROTECTIVE ORDER**

## I. INTRODUCTION

This matter comes before the Court on defendants' motion for a protective order (Dkt. #41). Defendants seek to quash the June 25, 2007 Rule 30(b)(6) deposition notice to defendant Trident Seafoods Corporation ("Trident") and the June 26, 2007 notice of deposition for four other Trident employees. For the reasons set forth below, the Court denies the motion.

## II. DISCUSSION

Defendants have not certified that they met and conferred with opposing counsel prior to filing this motion as required by Local Rule 37 and Federal Rule of Civil Procedure 26(c). The failure to make that certification is all the more startling in light of the fact that the Court has admonished plaintiff three times for filing discovery motions without first meeting and conferring. Defendants argue that the requirement does not apply to motions for a protective

1 order, but Federal Rule of Civil Procedure 26(c) specifically states that a motion for a protective  
2 order must be “accompanied by a certification that the movant has in good faith conferred or  
3 attempted to confer with other affected parties in an effort to resolve the dispute without court  
4 action.” Accordingly, because the motion contains no such certification, it is denied.

5 Defendants have also violated the Court’s rules by filing their motion without a proposed  
6 order and by including all of their arguments in counsel’s declarations rather than in memoranda  
7 in violation of Local Rule 7(b)(1). Furthermore, it is inappropriate to include argument in  
8 declarations. The Court will not strike the filings as plaintiff requests because it prefers to  
9 consider issues with the benefit of a complete record. However, any future improper filings will  
10 be stricken, and future violations of the Court’s rules may result in sanctions.

11 Even if counsel had conferred, the Court would deny the motion. Defendants object to  
12 the timing of the Rule 30(b)(6) deposition, noted for July 3, because it was noted for just days  
13 prior to the discovery deadline of July 8, 2007. Noting depositions for the final days of the  
14 discovery period, however, is not atypical or improper. Defendants also object to the deposition  
15 notices because they were served while defense counsel was on vacation, after they had served a  
16 notice of unavailability. However, defense counsel’s absence during the final two weeks of  
17 discovery does not justify a moratorium on discovery. Defendants could have, but apparently  
18 chose not to, seek a continuance of the depositions until after counsel returned from vacation  
19 rather than filing this motion. Also, it appears that plaintiff’s counsel requested depositions  
20 regarding at least some of the deposition topics and witnesses over a month prior to service of  
21 the deposition notices. Defendants also argue that they only received five business days notice  
22 of the Rule 30(b)(6) deposition. Under the circumstances and after counsel had been discussing  
23 the issues for some time, the notice was reasonable.

24 Defendants also argue that plaintiff seeks to depose several witnesses on numerous Rule  
25 30(b)(6) topics during the height of fishing season. However, defendants may designate a single  
26 witness to lessen the burden on them, or seek an agreement to conduct the deposition after the  
27

1 conclusion of fishing season.

2 They also argue that discovery should be limited to the discovery set forth in the parties'  
3 June 25, 2007 stipulation (Dkt. #38). In that stipulation, however, the parties agreed to a limited  
4 extension for purposes of conducting some depositions after the discovery deadline. The  
5 stipulation does not reflect an agreement to limit the scope of discovery.

6 Defendants further object to the scope of the Rule 30(b)(6) deposition. They argue that  
7 the practices of their other facilities are not relevant and plaintiff is not entitled to information  
8 from 1995 through 2003. Seven of the eleven listed topics, however, are narrowly tailored.  
9 Declaration of Kenneth Karlberg, (Dkt. #42), Ex. 1 (requesting, for example, "Persons with  
10 knowledge of factual basis for any claim that (aside from his wrench slipping off a bolt) plaintiff  
11 did not follow correct procedure in performing the job he was performing at the time of his  
12 8/22/03 accident and injury"). Although defendants allege that the first four listed topics should  
13 be limited to information regarding the vessel, there is no evidence that the machines, gloves, or  
14 job duties were any different at Trident's other facilities. Nor have defendants provided any  
15 evidence to show that speaking to the listed topics will be unduly burdensome.

16 Defendants also object to the notice of depositions for the other four witnesses because  
17 service was improper. However, defendants had previously and explicitly stated that three of  
18 the four employees were speaking agents of the company and should not be contacted on an *ex*  
19 *parte* basis. Corrected Declaration of George Luhrs, (Dkt. #55-5), Exs. A, B. The fourth  
20 witness is a company manager. Accordingly, the Court will not quash the notices based on  
21 allegedly improper service.

22 Finally, the recent filings in this case show that the rancor between counsel has risen to  
23 an unacceptable level, undermining their ability to resolve issues in mutually beneficial ways or  
24 to effectively advocate their positions in filings. Counsel are reminded of the admonition in the  
25 Introduction to the Civil Rules that "judges in this district are very concerned about  
26 professionalism among attorneys, especially in the conduct of discovery." The Court expects a  
27  
28

1 higher level of professional courtesy and respect in counsel's interactions and in their filings.  
2 Also, in the hope that in-person meetings will result in increased civility, counsel must meet and  
3 confer *in person* and certify to the Court that they have done so prior to filing any additional  
4 motions regarding discovery or for extensions of time.

5 **III. CONCLUSION**

6 For all of the reasons set forth above, defendants' motion for a protective order (Dkt. #41)  
7 is DENIED.

8

9 DATED this 23<sup>rd</sup> day of July, 2007.

10

11 

12 Robert S. Lasnik  
13 United States District Judge